The defense in the original action rested on the ground that no notice had been given of the falsity of a material warranty in the original policy as to the existence of certain division walls, and that the waiver of the warranty by the insurance brokers was ultra vires. Particular importance is given to the prevailing doctrine that insurance brokers are not agents, the leading case mentioned being *Allen* v. *Insurance Co.*, 123 N. Y. 6. The many cases contra are not now considered of authority. The court argues that the endorsement, containing no mention of the warranty, but reiterating the original policy in other respects, and subsequently added to the policy, was not a waiver, because not conflicting with original form of policy. It is clear that this is not the real reason, for the endorsement did not act as a waiver, because it was added (according to the evidence) by the brokers, who were not agents, and therefore had no authority to waive a warranty. The dissenting opinion is a most thorough demonstration of the possibility of waiver by such an endorsement, but does not even allude to the possible lack of authority on part of the brokers. This disregard of the vital question makes the dissenting opinion of no weight whatever. The brokers were not agents, had no authority to waive conditions, and notice to them was not notice to the company or its agents. *Smith* v. *Farmers' Mut. F. Ins. Co.*, 19 Ohio St. 287; *Devens* v. *Mechanics, etc., Ins. Co.*, 83 N. Y. 168.

MUNICIPAL BONDS—DEMAND—PRIORITIES—MEYER V. WIDBER, TREASURER (Bohen, Intervener), 58 Pac. Rep. 532 (Cal.).—*Held*, that where under statute damages to abutting property owners are to be paid only in bonds, it is no defense to a mandamus compelling payment of a bond, that other bondholders had made prior demands, which had been refused for lack of funds. Beatty, C. J., Temple, J., and Henshaw, J., dissenting.

The decision of the court is without doubt correct. The demand upon the treasurer, when he had funds applicable for the purpose, gives the parties demanding, upon refusal of their demand, the right to a mandamus. *Meyer* v. *Porter*, 65 Cal. 67. The fact that the intervener neglected to follow up his demand by an action would not give him a preferred claim over one who made a subsequent demand and chose to enforce his right. It has been held that a judgment creditor of a county who had received a warrant on the treasurer, which was refused payment, might have mandamus to enforce collection of a tax to pay such judgment, and that he is not bound to wait and take his turn among other warrant holders. 2 *Cent. Law Journal* 771.

The chief justice, who dissents, contends that the intervener should be given priority in payment, for, having made a prior demand, the treasurer was legally obliged to make payment, unless the intervener had forfeited his rights. Furthermore, that it was the duty of the appellant to show that when he commenced his proceeding, that those who had made prior demands had lost their right of action. This the appellant failed to do. The contention is also made that if the doctrine of this case is carried to its logical conclusion, the custodian of a fund in the position of the defendant may pay or refuse those who make demands, irrespectively, unless sued, or he may refuse all until some favored claimant serves him with a writ of mandamus. The judge, however, fails to cite any authorities in support of this reasoning.

MUNICIPAL CORPORATIONS—ORDINANCES—HACK STANDS IN STREETS ADJACENT TO RAILWAY DEPOTS—PENNSYLVANIA CO. V. CHICAGO, 54 N. E. 825.—The Union Depot, leased by the Pennsylvania Company and used by several different railways, fronts on Canal street, between Madison and Van Buren. All through tickets of lines using this depot bear coupons for conveyance through the city of Chicago from this station to the station of the connecting line, and each railway company has a contract for the use of a line of coaches for the performance of this service. A portion of the rail-

roads' own ground is used by the vehicles of this line of coaches, from whence they may be called by electric bells to the different exits from the depot. The city of Chicago by ordinance established the east side of Canal street, between Adams and Madison, as a place where hacks were permitted to stand. The Railway Company brought a bill, praying for an injunction restraining the city from continuing the stand for hacks, on the ground of irreparable injury by reason of interference, interruption and daily inconvenience to the complainants, amounting to an interference with their private rights, and causing an unjust burden upon their property without compensation. And, further, that it gives for private use a portion of Canal street, which is held by the city in trust solely for use as a public street. *Held*, the ordinance is a reasonable and valid exercise of the powers conferred upon the Common Council of the city of Chicago. Decree of lower court dismissing bill affirmed.

The doctrine of the court is that a railroad is a quasi-public corporation, and a railroad depot a public building. The special easement of the abutting owner in the case of a building used for public purposes, though privately owned, inheres in the city as trustee for the public. That it may, as a benefit to the public, and to prevent the railroad company from monopolizing the business of transfer, permit hack stands at such places. Cf. *Railroad Co.* v. *Langlois*, 9 Mont. 419; *Railroad* v. *Tripp*, 147 Mass. 43; *Marriott* v. *Railway*, 1 C. B. (N. S.) 499; *McConnell* v. *Pedigo*, 92 Ky. 465; *State* v. *Reed*, 24 Lou. 308 (Miss.).

Cartwright, C. J., dissents. The occupation of a street as a place for the owners of hacks, carriages, and express wagons to keep them while waiting for employment in the carriage of persons or property, is a purely private use. It is of the same nature as the occupation of premises as a stable yard. *Rex* v. *Cross*, 3 Camp. 224; *Branahan* v. *Hotel Co.*, 39 Ohio St. 333; *McCaffrey* v. *Smith*, 41 Hun. 117. Such a use is a perversion and violation of the trust on which the city holds the streets. 2 *Dill. Mun. Corp.* § 660; *Com.* v. *Passmore*, 1 Serg. and Rawle 217; *Lockwood* v. *Railroad Co.*, 122 Mo. 86. Injunction is a proper remedy. *High Injunctions*, 3d Ed. § 816; *Hill. Inj.*, 273; *Greene* v. *Oakes*, 17 Ill. 249.

MUNICIPAL CORPORATIONS—RIPARIAN OWNERS—POLLUTION OF WATER COURSES BY SEWAGE—INJUNCTION—CITY OF VALPARAISO V. HAGEN, 54 N. E. 1062 (Ind.).—The sewage system of Valparaiso, a city of 8,000 inhabitants, discharges 47,000 gallons of sewage daily into a marsh that drains into Salt Creek. The city further arranged for a direct outlet by the extension of its main sewer through the marsh to Salt Creek. Ninteen owners of lower lands abutting on this stream brought a bill praying that the city be enjoined forever from constructing said sewer outlet, or emptying the sewage of the city into said stream. Upon error for demurrer, overruled, *held*, failure to aver the absence of skill or want of due care, or that some other outlet could more reasonably be had, or that some other reasonable method of disposing of city sewage is available, is a fatal defect and the demurrer should be sustained.

The right of the riparian owner is not absolute, but a natural one, qualified and limited like all natural rights by the existence of like rights in others. His enjoyment is prior to those below him and subsequent to those above. *Merrifield* v. *Worcester*, 110 Mass. 218. The city of Valparaiso is an upper riparian owner. As such it has rights to the use of Salt Creek, though these rights are correlative with those of other riparian owners on the same stream. *Bassett* v. *Salisbury Mfg. Co.*, 43 N. H. 569. Any damage resulting from acts of the city in a reasonable exercise of these rights would be *damnum absque injuria*. It must be presumed that public officers will perform their duties reasonably and with due care, therefore, injunction will not lie.